

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR BROWN	:	CIVIL ACTION
	:	
v.	:	
	:	
KENNETH S. APFEL,	:	
Commissioner of Social Security	:	NO. 00-3287

MEMORANDUM ORDER

This is an appeal from a denial of social security disability benefits. The parties filed cross-motions for summary judgment. The case was referred to a U.S. Magistrate Judge for a report and recommendation. The Magistrate Judge has recommended that defendant's motion be granted. Plaintiff has objected to the report and recommendation.

Plaintiff suggests that the Magistrate Judge was selective in his treatment of the evidence. It appears that it is plaintiff who has been somewhat selective.

Plaintiff refers to a purported failure to determine his actual duties as a gate guard. Yet, it appears from the record that the ALJ found to be the duties those which plaintiff himself testified to.

Plaintiff suggests that there is an absence of support for a finding that he worked in that position for the requisite three months. In fact, plaintiff himself testified that he worked as a gate guard from the end of November 1989 to April 10, 1990.

Plaintiff states that Dr. Schwartz told him to cease working at that time. Dr. Schwartz's discharge summary from

November 1989 reflects a recommendation that plaintiff not return to work "at the present time." There is no reference in Dr. Schwartz's subsequent treatment notes to a direction to cease working in April 1990. Moreover, there is no such work restriction by any of the subsequent treating or examining physicians.

Plaintiff suggests that his gout condition was not taken into account. While the Magistrate Judge may have glossed over this, it clearly appears that the ALJ properly assessed this condition. The record amply supports her determination that the symptoms were infrequent, were triggered by alcohol consumption from which plaintiff declined to desist despite medical recommendations to do so and did not, alone or in combination with other conditions, prevent him from performing past relevant work.

Plaintiff contends the ALJ and Magistrate Judge failed to give due weight to the results of the stress test administered by Dr. Fitzpatrick in November 1996 which plaintiff characterizes as "abnormal." Plaintiff fails to note that Dr. Fitzpatrick concluded that plaintiff made a "submaximal effort" which resulted in an "underestimate" of his capacity which nevertheless was still consistent with light physical activity.

Plaintiff contends that the assessment of Dr. Bonoguara was not given due weight. The ALJ explained that she gave this assessment less than controlling weight because of inherent ambiguities, plaintiff's own testimony and the conclusion of

Dr. Fitzpatrick two months later. Moreover, the ALJ's ultimate determination is consistent with Dr. Bonoguara's assessment of plaintiff's capacity for sedentary work.

Plaintiff suggests that the ALJ did not consider all of the pertinent Listings of impairments. The ALJ did consider all of the Listings and found that plaintiff's conditions "do not meet the severity standards established in Appendix 1." She noted that "no treating, consulting or reviewing medical source has offered results that are equivalent in severity to any impairment described in Appendix 1." Plaintiff did not meet the requirements of Listing 4.02B. Although he was scored at five METS on the November 1996 stress test, the administering physician determined that plaintiff made a "submaximal effort" and in any event he did not demonstrate the required manifestations in Listing 4.04A.

Insofar as the ALJ found "less than wholly credible" plaintiff's subjective complaints of debilitating symptoms, she properly relied on medical evidence of record and her observation of plaintiff's testimony.

Plaintiff also objects to the use by the Magistrate Judge of the "indistinct term" of "disabling severity" in discussing plaintiff's symptoms. This term may be more colloquial than precise. Nevertheless, it is clear from the Report that the Magistrate Judge was talking about factors which would or would not preclude substantial gainful activity.

Plaintiff correctly notes that the Magistrate Judge did not expressly discuss the echocardiogram of August 26, 1994. The ALJ, however, distinctly discussed this test and fairly evaluated it in the context of contemporaneous x-ray and cardiac catheterization reports as well as plaintiff's statements about moving furniture, lifting up to fifty pounds and ability to walk for one mile.

The ALJ considered and analyzed all of the evidence. She appropriately explained her reasons for the conclusions she reached regarding that evidence. Her ultimate decision regarding residual functional capacity and disability is supported by substantial evidence.

ACCORDINGLY, this day of April, 2001, upon consideration of the parties' cross-Motions for Summary Judgment, the record herein, the Report and Recommendation of the United States Magistrate Judge and the objections thereto, **IT IS HEREBY ORDERED** that the Report and Recommendation is **APPROVED and ADOPTED**; plaintiff's Motion for Summary Judgment is **DENIED**; the defendant Commissioner's Motion for Summary Judgment is **GRANTED**; and, **JUDGMENT** in the above action is **ENTERED** for the defendant Commissioner.

BY THE COURT:

JAY C. WALDMAN, J.